Americold Logistics, Inc. and Teamsters Local 325 affiliated with the International Brotherhood of Teamsters, AFL-CIO. Case 33-CA-12882

May 19, 1999

DECISION AND ORDER

By Members Fox, Liebman, and Brame

Pursuant to a charge filed on January 14, 1999, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on March 17, 1999, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish information following the Union's certification in Case 33–RC–4275. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); Frontier Hotel, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On April 12, 1999, the General Counsel filed a Motion for Summary Judgment. On April 14, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain and to furnish information, but attacks the validity of the certification on the basis of the Board's disposition of its objections to the election and of certain challenged ballots in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that the Respondent has not, by its denial, raised any issue requiring a hearing with respect to the Union's request for information. On December 28, 1998, the Union requested the following information from the Respondent:¹

- (1) A current list of all unit employees, their work histories, classifications, seniority dates and pay roll histories:
- (2) Documents and all other relevant information that demonstrate and explain all current work rules, practices and procedures concerning discipline and job assignments or reassignments; and
- (3) Documents and all other relevant information regarding all benefits inclusive of pension plan, insurance, vacations, sick days, holidays, and bereavement, as well as any other data that may be needed pertinent to meaningful negotiations.

The Respondent's answer admits that the Respondent refused to provide this information to the Union. Further, although the Respondent's answer effectively denies that the information requested is necessary and relevant to the Union's duties as the exclusive representative of the unit employees, it is well established that wage and employment information of this type is presumptively relevant for purposes of collective bargaining and must be furnished on request. See, e.g., *Maple View Manor*, 320 NLRB 1149 (1996); *Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1977). The Respondent has not attempted to rebut the relevance of the requested information.

Accordingly, we grant the Motion for Summary Judgment² and will order the Respondent to bargain and to furnish the requested information.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Delaware corporation, with an office and place of business in Rochelle, Illinois, has been engaged in the business of providing warehousing services to store and handle third party food products in temperature controlled warehouses.

During calendar year 1998, the Respondent, in conducting its business operations, derived gross revenues in excess of \$1 million and purchased goods and materials valued in excess of \$50,000 directly from vendors located outside the State of Illinois.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.³

¹ The complaint allegation varies slightly from the actual description of the information requested in the December 28, 1998 letter from the Union which was attached to the complaint. We have described the information as it is described in that letter.

² The Respondent's requests that the complaint be dismissed and that it recover its costs and attorney's fees are therefore denied.

³ The Respondent's answer to the complaint denies having knowledge or information sufficient to form a belief as to whether the Union is a labor organization. However, by entering into a Stipulated Election Agreement in the representation proceeding, the Respondent effectively agreed that the Union is a labor organization. At no time during the representation proceeding did the Respondent question the Union's status as a 2(5) labor organization. Its failure to raise this issue in the

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held April 15, 1998, the Union was certified on November 30, 1998, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time warehouse and maintenance employees employed by the Employer at its 1010 Americold Drive, Rochelle, Illinois location, including warehouse employees, cycle counters, maintenance employees, janitorial employees, sanitation employees and load supervisors, but excluding customer service representatives, office clerical employees, foremen, leadmen, temporary employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.⁴

B. Refusal to Bargain

At all times since November 30, 1998, the Union has requested, and is requesting, the Respondent to meet and bargain. On December 28, 1998, the Union, by letter, requested the Respondent to furnish information. Since on or about January 6, 1999, the Respondent has failed and refused to meet and bargain and to furnish information. We find that this failure and refusal constitutes an unlawful failure and refusal to meet and bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing on and after January 6, 1999, to meet and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the cer-

underlying representation proceedings precludes the Respondent from litigating the matter in this proceeding. *Biewer Wisconsin Sawmill*, 306 NLRB 732 fn. 1 (1992).

tification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Americold Logistics, Inc., Rochelle, Illinois, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Refusing to bargain with Teamsters Local 325 affiliated with the International Brotherhood of Teamsters, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.
- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:
 - All full-time and regular part-time warehouse and maintenance employees employed by the Employer at its 1010 Americold Drive, Rochelle, Illinois location, including warehouse employees, cycle counters, maintenance employees, janitorial employees, sanitation employees and load supervisors, but excluding customer service representatives, office clerical employees, foremen, leadmen, temporary employees, guards and supervisors as defined in the Act.
- (b) Furnish the Union the information that it requested on December 28, 1998.
- (c) Within 14 days after service by the Region, post at its facility in Rochelle, Illinois, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 33 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the

⁴ The Respondent's reliance on an alleged good-faith doubt of the Union's majority status as a defense to the complaint allegations is clearly without merit. The Respondent has alleged no circumstances that would warrant its refusal to honor the Board's certification. *Ray Brooks v. NLRB*, 348 U.S. 96 (1954).

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 6, 1999.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Teamsters Local 325 affiliated with the International Brotherhood of Teamsters, AFL-CIO, as the exclusive representative of the employees in the bargaining unit, and WE WILL refuse

to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time warehouse and maintenance employees employed by us at our 1010 Americold Drive, Rochelle, Illinois location, including warehouse employees, cycle counters, maintenance employees, janitorial employees, sanitation employees and load supervisors, but excluding customer service representatives, office clerical employees, foremen, leadmen, temporary employees, guards and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested on December 28, 1998.

AMERICOLD LOGISTICS, INC.